

Officer History

Officer Name: Tofalli, Andrew

Tax ID: 955584

Sex: M

Shield: 26431

Race: White

Rank: POM

Command: 077

DOB: [REDACTED]

Appt Date: 07/09/2013

Age: [REDACTED]

Tenure: 7

CCRB #	Report Date	Incident Date	Allegation	Disposition	NYPD Disposition	NYPD Penalty	Command
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
201909824	11/11/2019	10/01/2019	OMN - Failure to prepare a memo book entry	Other Misconduct			077
	11/11/2019	10/01/2019	OMN - Improper use of body-worn camera	Other Misconduct			077
202100558	01/25/2021	01/07/2021	Abuse - Failure to provide RTKA card				077
	01/25/2021	01/07/2021	Abuse - Search (of person)				077
	01/25/2021	01/07/2021	Abuse - Stop				077
202100913	02/01/2021	03/05/2020	Abuse - Search (of person)				077
	02/01/2021	03/05/2020	Abuse - Stop				077
	02/01/2021	03/05/2020	Abuse - Failure to provide RTKA card				077
	02/01/2021	03/05/2020	Force - Hit against inanimate object				077
Total Charges = 10				Total Cases = 4			

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Caroline Moses	Team: Squad #13	CCRB Case #: 201909824	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tue, 10/01/2019 5:00 PM	Location of Incident: In front of 720 Saint Marks Avenue	Precinct: 77	18 Mo. SOL 04/01/2021	EO SOL 11/16/2021	
Date/Time CV Reported Thu, 10/31/2019 8:26 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/11/2019 11:59 AM		

Complainant/Victim	Type	Home Address
1. C [REDACTED] G [REDACTED]	Comp/Victim	[REDACTED]
2. J [REDACTED] B [REDACTED]	Victim	Unknown

Witness(es)	Home Address
1. K [REDACTED] Y [REDACTED]	[REDACTED]
2. M [REDACTED] Unknown	Unknown

Subject Officer(s)	Shield	TaxID	Command
1. SGT G [REDACTED] C [REDACTED]	[REDACTED]	[REDACTED]	077 PCT
2. POM C [REDACTED] J [REDACTED]	[REDACTED]	[REDACTED]	077 PCT
3. POM Andrew Tofalli	26431	955584	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A . SGT G [REDACTED] C [REDACTED]	Abuse of Authority: Sergeant G [REDACTED] C [REDACTED] stopped J [REDACTED] B [REDACTED]	A . Exonerated
B . SGT G [REDACTED] C [REDACTED]	Abuse of Authority: Sergeant G [REDACTED] C [REDACTED] frisked J [REDACTED] B [REDACTED]	B . Substantiated
C . POM C [REDACTED] J [REDACTED]	Abuse of Authority: Police Officer C [REDACTED] J [REDACTED] frisked J [REDACTED] B [REDACTED]	C . Substantiated
D . SGT G [REDACTED] C [REDACTED]	Abuse of Authority: Sergeant G [REDACTED] C [REDACTED] searched J [REDACTED] B [REDACTED]	D . Substantiated
E . POM C [REDACTED] J [REDACTED]	Abuse of Authority: Police Officer C [REDACTED] J [REDACTED] searched J [REDACTED] B [REDACTED]	E . Substantiated
F . SGT G [REDACTED] C [REDACTED]	Abuse of Authority: Sergeant G [REDACTED] C [REDACTED] frisked C [REDACTED] G [REDACTED]	F . Substantiated
G . POM C [REDACTED] J [REDACTED]	Abuse of Authority: Police Officer C [REDACTED] J [REDACTED] frisked C [REDACTED] G [REDACTED]	G . Substantiated
H . SGT G [REDACTED] C [REDACTED]	Abuse of Authority: Sergeant G [REDACTED] C [REDACTED] searched C [REDACTED] G [REDACTED]	H . Substantiated
I . POM C [REDACTED] J [REDACTED]	Abuse of Authority: Police Officer C [REDACTED] J [REDACTED] searched C [REDACTED] G [REDACTED]	I . Substantiated
J . SGT G [REDACTED] C [REDACTED]	Abuse of Authority: Sergeant G [REDACTED] C [REDACTED] interfered with C [REDACTED] Green's use of a recording device.	J . Unsubstantiated
K . SGT G [REDACTED] C [REDACTED]	Other: Sergeant G [REDACTED] C [REDACTED] failed to prepare a memo book entry as required.	K . Other Misconduct
L . POM Andrew Tofalli	Other: Police Officer Andrew Tofalli failed to prepare a memo book entry as required.	L . Other Misconduct

Officer(s)	Allegation	Investigator Recommendation
M . SGT G [REDACTED] C [REDACTED]	Other: Sergeant G [REDACTED] C [REDACTED] improperly used his body-worn camera according to Patrol Guide Procedure 212-123.	M . Other Misconduct
N . POM C [REDACTED] J [REDACTED]	Other: Police Officer C [REDACTED] J [REDACTED] improperly used his body-worn camera according to Patrol Guide Procedure 212-123.	N . Other Misconduct
O . POM Andrew Tofalli	Other: Police Officer Andrew Tofalli improperly used his body-worn camera according to Patrol Guide Procedure 212-123.	O . Other Misconduct

Case Summary

On October 31, 2019, Mr. C [REDACTED] G [REDACTED] called IAB and filed this complaint on behalf of himself and his friend, J [REDACTED] B [REDACTED]. It was received by the CCRB on November 11, 2019.

On October 1, 2019, Mr. G [REDACTED] was standing on the sidewalk outside 720 Saint Marks Avenue in Brooklyn with his friends, Mr. B [REDACTED] K [REDACTED] Y [REDACTED] and M [REDACTED] (last name unknown). Police Officer C [REDACTED] J [REDACTED] Police Officer Andrew Tofalli, and Sergeant C [REDACTED] C [REDACTED] all of the 77th Precinct, stopped Mr. G [REDACTED] and Mr. B [REDACTED] (**Allegation A: Abuse of Authority, exonerated**). PO J [REDACTED] in the presence of Sgt. C [REDACTED] frisked and searched Mr. B [REDACTED] (**Allegations B through E: Abuse of Authority, substantiated**), and Mr. G [REDACTED] (**Allegations F through I: Abuse of Authority, substantiated**). Sgt. C [REDACTED] and PO J [REDACTED] allegedly tried to knock Mr. Green's phone, which he was using to record the incident, from his hands (**Allegations J: Abuse of Authority, unsubstantiated**). PO J [REDACTED] and PO Tofalli failed to prepare memo book entries regarding this incident (**Allegations K and L: Other Misconduct Noted**). Sgt. C [REDACTED] did not record this incident on his body-worn camera, and PO J [REDACTED] and PO Tofalli began recording partway through the incident (**Allegations M through O: Other Misconduct Noted**).

Mr. G [REDACTED] was issued a summons for unlawful possession of marijuana (**Board Review 19**). The Office of Court Administration ("OCA") does not have any record of the disposition of this summons (**Board Review 25**). Mr. B [REDACTED] was not arrested or summonsed.

PO Johnson's and PO Tofalli's body-worn cameras captured this incident. The BWC footage can be found in IAs # 64 – 66 (**Board Review 01-03**), and the summaries can be found in IA # 67 – 69 (**Board Review 04-06**). Mr. G [REDACTED] recorded this incident on his cell phone, and he provided this footage to the investigation. The cell phone video can be found in IAs 34 – 36 (**Board Review 07-09**), and the summaries can be found in IAs # 46 – 48 (**Board Review 10-12**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant C [REDACTED] C [REDACTED] stopped J [REDACTED] B [REDACTED]

Mr. G [REDACTED] said that immediately prior to this incident, he was standing in front of 720 Saint Marks Avenue in Brooklyn with Mr. B [REDACTED] Mr. Y [REDACTED] and M [REDACTED] Mr. B [REDACTED] Mr. Y [REDACTED] and M [REDACTED] were smoking marijuana. Mr. G [REDACTED] denied smoking marijuana, citing the fact that he cannot do so because he gets drug-tested at his job (**Board Review 13**). Sgt. C [REDACTED] PO J [REDACTED] and PO Tofalli approached in a police car and one of them called out the window, "You guys smoking weed?" Mr. B [REDACTED] responded, "Yeah." All three officers exited the car and approached Mr. G [REDACTED] and his friends. Mr. B [REDACTED] Mr. Y [REDACTED] and M [REDACTED] were unavailable to the investigation (See IAs for contact attempts).

PO J [REDACTED] said the officers were driving eastbound on Saint Marks Avenue in an unmarked sedan at approximately five miles per hour when from about five to ten car-lengths away, he first smelled marijuana, then observed Mr. B [REDACTED] hand what he recognized to be a marijuana cigarette to Mr. G [REDACTED] presumably either to discard or secret it (**Board Review 14**). PO J [REDACTED] was seated in the rear driver's side seat of the car, and PO Tofalli was driving. All the officers approached Mr. G [REDACTED] and Mr. B [REDACTED] together.

Sgt. C [REDACTED] said he was the one sitting in the back seat, and that PO J [REDACTED] was sitting in the front passenger seat. Sgt. C [REDACTED] smelled marijuana before PO J [REDACTED] shared his observation of the marijuana cigarette, but said it was Mr. G [REDACTED] whom PO J [REDACTED] pointed out, and whom Sgt. C [REDACTED] personally observed holding a marijuana cigarette, which he recognized as marijuana from its wrapping as well as the odor of marijuana in the vicinity (**Board Review 15**). Sgt. C [REDACTED] said PO J [REDACTED] approached Mr. G [REDACTED] alone at first, and he and PO Tofalli approached three

to five minutes later, because he initially felt that PO J [REDACTED] could handle the situation on his own, but later decided he and PO Tofalli should join him once Mr. G [REDACTED] began to raise his voice.

PO Tofalli did not recall this incident (**Board Review 16**), and the BWC footage does not capture this portion of the incident.

People v. DeBour, 40 N.Y.2d 210 (1976) (**Board Review 17**) states that officers may stop a person if there exists reasonable suspicion that the person has committed, is committing, or is about to commit a crime. A person is guilty of unlawful possession of marijuana in the second degree when he knowingly and unlawfully possesses marijuana. New York Penal Law, Section 221.05 (**Board Review 18**).

It is undisputed that marijuana was being consumed immediately prior to this incident, though who was smoking the marijuana remains in dispute. (Mr. G [REDACTED] was summonsed for smoking marijuana, so no stop allegation has been pled for him, as his denial amounts to a summons dispute). However, given that Mr. G [REDACTED] and PO J [REDACTED] both said that Mr. B [REDACTED] who did not receive a summons as a result of this incident, was smoking marijuana, the investigation determined that he was. Because a preponderance of the evidence indicates that Mr. B [REDACTED] was observed smoking a marijuana cigarette immediately prior to being stopped, Sgt. C [REDACTED] PO J [REDACTED] and PO Tofalli were justified in stopping him for possession of marijuana. (Because Sgt. C [REDACTED] was the supervisor present during the stop, this allegation has been solely pled to him.) It is therefore recommended that **Allegation A** be closed as **exonerated**.

Allegation (B) Abuse of Authority: Sergeant C [REDACTED] C [REDACTED] frisked J [REDACTED] E [REDACTED]

Allegation (C) Abuse of Authority: Police Officer C [REDACTED] J [REDACTED] frisked J [REDACTED] B [REDACTED]

Allegation (D) Abuse of Authority: Sergeant C [REDACTED] C [REDACTED] searched J [REDACTED] B [REDACTED]

Allegation (E) Abuse of Authority: Police Officer C [REDACTED] J [REDACTED] searched J [REDACTED]

B [REDACTED] Allegation (F) Abuse of Authority: Sergeant C [REDACTED] C [REDACTED] frisked C [REDACTED]

G [REDACTED]

Allegation (G) Abuse of Authority: Police Officer C [REDACTED] J [REDACTED] frisked C [REDACTED] G [REDACTED]

Allegation (H) Abuse of Authority: Sergeant C [REDACTED] C [REDACTED] searched C [REDACTED] G [REDACTED]

Allegation (I) Abuse of Authority: Police Officer C [REDACTED] J [REDACTED] searched C [REDACTED] G [REDACTED]

Mr. G [REDACTED] said immediately after the officers approached, PO J [REDACTED] asked Mr. B [REDACTED] if he had any weapons and Mr. B [REDACTED] said no. PO J [REDACTED] patted down Mr. Brown's waist, arms, and legs, and reached into a coin pocket inside one of Mr. Brown's front waist jean pockets, removing a tooth grill wrapped in a tissue before either placing it back into Mr. Brown's pocket or handing it to Mr. B [REDACTED]. During the frisk of Mr. B [REDACTED] Mr. G [REDACTED] began recording the incident on his cell phone. PO J [REDACTED] then approached Mr. G [REDACTED] and asked him if he "had anything on him." Mr. G [REDACTED] did not recall whether PO J [REDACTED] frisked him, but thought he probably did. PO J [REDACTED] reached his hand into Mr. Green's sweatshirt pocket and removed a candy container. Mr. G [REDACTED] jokingly told PO J [REDACTED] that the container used to have marijuana in it. PO J [REDACTED] either handed the container back to Mr. G [REDACTED] or placed it back inside his pocket. Mr. B [REDACTED] Mr. Y [REDACTED] and M [REDACTED] were unavailable to the investigation (see IAs for contact attempts).

PO Tofalli's body-worn camera footage begins after the initiation of this incident. At the 00:03 minute mark of the media player timestamp, visible at the bottom of the screen, PO J [REDACTED] is captured patting down Mr. Brown's waist and legs and placing a non-visible object inside Mr. Brown's front right pants pocket (**Board Review 03**). From 00:17 to 00:38, PO J [REDACTED] pats down Mr. Green's waist and legs. At 00:27, Mr. G [REDACTED] is holding a small, clear cylindrical container.

Mr. G [REDACTED] PO J [REDACTED] and Sgt. C [REDACTED] all said that PO J [REDACTED] frisked Mr. G [REDACTED] and Mr. B [REDACTED] and that PO J [REDACTED] searched Mr. Green's pockets. Mr. G [REDACTED] and PO J [REDACTED] both said PO J [REDACTED] searched Mr. Brown's pockets as well. Sgt. C [REDACTED] could not recall whether Mr. B [REDACTED] was searched. PO Tofalli did not recall this incident.

PO J [REDACTED] (**Board Review 14**) said he approached Mr. G [REDACTED] and Mr. B [REDACTED] with the intention of issuing them summonses for possession of marijuana, and that when he reached them, the marijuana cigarette was no longer visible. He frisked and searched Mr. B [REDACTED] and Mr. G [REDACTED] to recover the marijuana cigarette. He did not see anything at any point that led him to suspect that Mr. B [REDACTED] or Mr. G [REDACTED] were armed. PO J [REDACTED] did not find marijuana inside either man's pockets. Sgt. C [REDACTED] did not recall whether PO J [REDACTED] told him why he frisked Mr. G [REDACTED] but he believed it was to find the marijuana cigarette (**Board Review 15**).

People v. DeBour, 40 N.Y.2d 210 (1976) (**Board Review 17**) states that officers may frisk someone if and only if they have a reasonable suspicion that they are armed and dangerous. If an apparent weapon is revealed in the course of a frisk, a limited search may be conducted only of the area where the apparent weapon was discovered. Frisks or warrantless searches for contraband are not permitted.

Because Sgt. C [REDACTED] was the supervisor present during the frisks and searches, these allegations have been pled to both him and PO J [REDACTED]

By PO Johnson's and Sgt. Cuevas's own admission, the officers lacked any reason to suspect that Mr. B [REDACTED] and Mr. G [REDACTED] were armed. PO J [REDACTED] under Sgt. C [REDACTED] supervision, frisked and searched them for the express purpose of locating the marijuana he had observed being smoked earlier, which is not permitted. It is therefore recommended that **Allegations B** through **I** be closed as **substantiated**.

Allegation (J) Abuse of Authority: Sergeant G [REDACTED] C [REDACTED] interfered with C [REDACTED] Green's use of a recording device.

Mr. G [REDACTED] said that after he was searched, Sgt. C [REDACTED] ordered him to produce his identification. As Mr. G [REDACTED] was reaching into his pocket to retrieve his identification, PO J [REDACTED] Sgt. C [REDACTED] and PO Tofalli all grabbed his wrists (**Board Review 13**). Mr. G [REDACTED] believed the officers grabbed his wrists to cause his phone, which he was using to record the incident, to fall out of his hand. Mr. G [REDACTED] asked the officers whether they wanted his hands or his identification. Sgt. C [REDACTED] said, "Your ID," and the officers released Mr. Green's wrists.

PO J [REDACTED] and Sgt. C [REDACTED] both said they grabbed Mr. Green's wrists because he made a motion to push something into his pants pocket, and they were attempting to prevent him from putting away a small g [REDACTED] container from which they ultimately recovered marijuana. Sgt. C [REDACTED] said he removed the container from Mr. Green's hand and threw it on the ground, from where he later instructed PO J [REDACTED] to pick it up and vouch for it (**Board Review 15**). PO J [REDACTED] had previously told him that Mr. G [REDACTED] had put his hands in his pockets. PO J [REDACTED] said the container was recovered from the pocket that Mr. G [REDACTED] reached into but he could not recall whether he or Sgt. C [REDACTED] found it (**Board Review 14**). PO J [REDACTED] said Sgt. C [REDACTED] noticed the motion that Mr. G [REDACTED] made and grabbed Mr. Green's wrist first. All three officers denied attempting to interfere with Mr. Green's ability to record the incident (**Board Review 16**).

PO Tofalli's body-worn camera footage (**Board Review 01**), between the 00:16 and 00:35 minute marks of the media player timestamp, visible at the bottom of the screen, captures Sgt. C [REDACTED] ordering Mr. G [REDACTED] to provide his identification, then grabbing Mr. Green's left wrist and PO

J [REDACTED] subsequently grabbing Mr. Green's right wrist. Mr. G [REDACTED] has a cell phone in one hand and a wallet in his other hand. After several seconds, the officers release Mr. Green's wrists. Mr. G [REDACTED] asks if the officers want his hands or his identification. For much of the video, Mr. Green's hands are not in the frame.

Mr. Green's cell phone footage captures this portion of the incident from the 00:50-01:44 timestamps (**Board Review 07**). It does not capture Mr. Green's hands, however at 01:04, Mr. G [REDACTED] and PO J [REDACTED] are discussing a container and the fact that Mr. G [REDACTED] previously said it contained marijuana. This container is never visible in the frame.

PO Johnson's testimony and PO Tofalli's body-worn camera footage indicate that Sgt. C [REDACTED] the supervisor on scene, initiated the action of restraining Mr. Green's wrists, so this allegation is pled against him.

Because Mr. Green's hands are not visible for much of the video captured by PO Tofalli's body-worn camera footage and Mr. Green's cell phone footage, the investigation could not determine if Mr. G [REDACTED] was holding a g [REDACTED] vial as PO J [REDACTED] and Sgt. C [REDACTED] described. Given the conflicting civilian and officer statements and absent dispositive evidence, the investigation was unable to determine if Sgt. C [REDACTED] interfered with Mr. Green's use of a recording device. It is therefore recommended that **Allegation J** be closed as **unsubstantiated**.

Allegation (K) Other Misconduct Noted: Sergeant G [REDACTED] C [REDACTED] failed to prepare a memo book entry as required.

Allegation (L) Other Misconduct Noted: Police Officer Andrew Tofalli failed to prepare a memo book entry as required.

Neither Sgt. C [REDACTED] nor PO Tofalli has any entries in his memo book regarding this incident (**Board Review 26-27**). Sgt. C [REDACTED] said he did not have any memo book entries because PO J [REDACTED] initiated the stop and therefore was the one who recorded the incident. PO Tofalli said he did not have any memo book entries regarding the incident because he was driving the car that day.

NYPD Patrol Guide, Procedure 212-08, requires officers to document observed or suspected violations of the law and any actions taken in their memo book (**Board Review 20**).

Because the investigation determined that Sgt. C [REDACTED] and PO Tofalli participated in this incident but failed to document it in their memo books as required, it is recommended that they be cited for **Other Misconduct**.

Allegation (M) Other Misconduct Noted: Sergeant G [REDACTED] C [REDACTED] improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

Allegation (N) Other Misconduct Noted: Police Officer Andrew Tofalli improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

Allegation (O) Other Misconduct Noted: Police Officer C [REDACTED] J [REDACTED] improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

Sgt. C [REDACTED] did not record this incident on his body-worn camera. He said he did not do so because his body-worn camera was in the officers' vehicle when the incident began (**Board Review 15**). PO J [REDACTED] and PO Tofalli both activated their body-worn cameras after they had already stopped Mr. B [REDACTED] and Mr. G [REDACTED]. PO Tofalli's body-worn camera footage begins during PO Johnson's frisk of Mr. B [REDACTED] and ends abruptly before beginning again to capture the officers grabbing Mr. Green's wrists and PO J [REDACTED] issuing the summons to Mr. G [REDACTED]. PO Johnson's body-worn camera footage begins between the search of Mr. B [REDACTED] and the frisk of Mr. G [REDACTED].

Because Sgt. C [REDACTED] did not activate his body-worn camera while supervising the searches of Mr. B [REDACTED] and Mr. G [REDACTED] or the issuing of a summons to Mr. G [REDACTED] and because PO J [REDACTED] and PO Tofalli both activated their body-worn cameras well after the start of taking enforcement action, it is recommended that they each be cited for **Other Misconduct**.

- [REDACTED]
[REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED].
- PO Tofalli has been a member of service for six years and has been a subject of two complaints comprised of three allegations, none of which were substantiated. PO Tofalli's CCRB history does not reflect any apparent pattern pertinent to this investigation.

- Mr. G [REDACTED] declined to mediate this complaint.
- As of January 24, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**Board Review 23**).
- [REDACTED]

Squad Leader: _____ IM Laura Kastner _____ 04/21/2020
Signature Print Title & Name Date